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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In RE: Applications of)	MM Docket No. 93-156
)	
TRINITY CHRISTIAN CENTER OF SANTA)	File No. BRCT-911129KR
ANA, INC.. d/b/a TRINITY BROAD-)	
CASTING NETWORK)	
<i>For Renewal of License of</i>)	
<i>Station WHSG(TV), Monroe, Georgia</i>)	
)	
and)	
)	
GLENDALE BROADCASTING COMPANY)	File No. BPCT-920228KE
<i>For Construction Permit</i>)	
<i>Monroe, Georgia</i>)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW

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SUMMARY

Trinity and the Mass Media Bureau agree that over the one year inaugural license term of WHSG-TV, the Station has provided a fully worthwhile program service to its service area--a service grounded in a sustaining and strong ascertainment process. WHSG-TV provided a variety of programs which fully addressed the needs and interests of the service area, and its service to children was particularly praiseworthy and meritorious. The MMB and Trinity thus correctly conclude WHSG-TV is entitled to a renewal expectancy.

In disagreeing on this point, Glendale presents a broadside attack on WHSG-TV's ascertainment generally, and on the responsiveness of the Station's programming to the ascertained needs and interest of the area. Throughout its presentation, however, Glendale is wrong on the record and the law. Glendale incorrectly attempts to substitute its judgment on whether a program meets an ascertained need for that of the licensee.--something it is not entitled to do. The court, and the Commission have consistently ruled that it is the good faith judgment of the licensee that controls, and there is no suggestion that Trinity abused its discretion in any way.

Similarly, Glendale attempts to dismiss the exemplary children's program service WHSG-TV has provided (both from a qualitative and quantitative view) by arguing there was no demonstrated "need" for such programming. Such a position, however, is untenable. It ignores decades of Commission pronouncements extolling the need of children's programming, and establishing it as a bedrock license obligation. It also ignores the findings of Congress in passing the Children's Television Act of 1990. Indeed, WHSG-TV provided seven hours of children's programming per week, 13 separate programs, and it was broadcast at times when

children were likely to be in the audience watching. This programming was not only free of excessive commercial matter, it was free of any commercial matter whatsoever. Clearly, WHSG-TV has earned a renewal expectancy, bolstered in large measure by its children's program service.

The Mass Media Bureau agrees with Glendale that Glendale's application should not be dismissed as technically defective, and that the minimum spacing rule should be waived for Glendale. The fact remains, however, that Glendale made no attempt whatsoever to investigate whether fully spaced sites were available--the cardinal threshold requirement recognized by the courts and the Commission before a short-spacing waiver can be granted.

Glendale maintains that it is entitled to preferential treatment, and that it need not show there were no fully spaced sites available. However, this position defies principles of due process and fairness since WHSG-TV, as the incumbent licensee, is specifically prevented by Rule 73.610 from doing what Glendale seeks to do--increase the current short-spacing without showing there are no fully spaced sites available.

Finally, Glendale's waiver showing is defective because it has not shown, nor even attempted to show, that there are any available sites in the area it identified where a fully spaced channel *63, Montgomery applicant could operate. Its waiver must therefore be denied.

Even if Glendale's waiver is granted, however, Trinity's entitlement to a renewal expectancy is dispositive

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<i>Monroe, Georgia</i>)	

TO: The Honorable Joseph Chachkin
Administrative Law Judge

REPLY FINDINGS OF FACT AND CONCLUSIONS OF LAW

Trinity Christian Center of Santa Ana, Inc., d/b/a Trinity Broadcasting Network ("Trinity" or "TBN"), by its attorney, hereby replies to the Proposed Findings of Fact and Conclusions of Law filed by the Mass Media Bureau ("MMB") and Glendale Broadcasting Company ("Glendale").^{1/}

^{1/} In this reply, the proposed Findings of Fact and Conclusions of Law filed by the Mass Media Bureau will be referred to as "MMB PFCL ¶ ____" and those filed by Glendale as "Glendale PFCL ¶ ____." The Proposed Findings of Fact and Conclusions of Law of Trinity will be referred to as "TBN PFCL ¶ ____."

I. INTRODUCTION

1. The Mass Media Bureau and TBN agree that TBN is entitled to a renewal expectancy for operation of WHSG-TV, Monroe, Georgia. The Mass Media Bureau and Trinity also agree, for the reasons set forth in the Proposed Findings and Conclusions of Law submitted in the WHFT-TV, Miami, Florida renewal proceeding, MM Docket No. 93-75, Glendale lacks the requisite character qualifications to be a Commission licensee because of the misrepresentations perpetrated upon the Commission by its controlling shareholder, George F. Gardner. In addition, for the reasons also expressed in MM Docket No. 93-75, the Mass Media Bureau and Trinity believe Trinity remains basically qualified to be a licensee.

2. Glendale and the Mass Media Bureau argue that Glendale is entitled to a waiver of the television minimum spacing rule (rule 73.610(b)). Trinity maintains, however, that Glendale has not met its required threshold showing that there are no fully spaced sites available to it, and thus no waiver should be issued. Glendale has failed to provide sufficient justification for a waiver of the rule, and it has not established that there are actually available sites within the area it identified where a fully spaced channel *63, Montgomery, Alabama applicant could locate. Glendale's position that it is entitled to preferential treatment in the grant of its waiver request because this is a comparative renewal proceeding is also unjustified.

3. In this reply, Trinity addresses the proposed findings and conclusions of the Mass Media Bureau and Glendale on an issue by issue basis.

II. GLENDALE SHORT-SPACING ISSUE

- A. When increasing the short-spacing presented by a grandfathered incumbent station, the renewal challenger must show there are no fully spaced sites available. Here, Glendale seeks to avoid that requirement and obtain preferential treatment.

4. Glendale relies exclusively on the EZ Communications, Inc., 8 FCC Rcd. 2448, 2450-51 (ASD 1993), case for the astonishing proposition that renewal challengers are excused from the routine thresholds needed to support a minimum spacing waiver (Glendale PFCL ¶¶ 132-134). What Glendale totally misses, and what vitiates its argument, is that its proposal increases the grandfathered short-spacing of WHSG-TV (TBN PFCL ¶ 93). Conversely, the proposal of the FM applicant in EZ reduced the short-spacing. 8 FCC Rcd. 2450 (¶ 16). EZ, thus, lends no support for Glendale's contention.^{2/}

5. Moreover, this is a television proceeding, not an FM proceeding. The television rules, unlike the FM rules, specifically proscribe the incumbent licensee from further reducing the minimum channel spacing without presenting a fully supported waiver, including the threshold requirement that there are no fully spaced sites available.^{3/} The FM rule (section 73.213) permits existing short-spaced stations to relocate to another similar short-spaced site, so long as the current overlap is not increased.^{4/} "Under these

^{2/} Likewise, in Royce International Broadcasting, 2 FCC Rcd. 1368 (ASD 1987), the FM challenger did not propose to "increase the existing short spacing" (Id., at ¶ 3).

^{3/} E.g., Ogden Television, Inc., 7 FCC Rcd. 3116 (VSD 1992).

^{4/} Specifically, section 73.213(a) provides: "Stations at locations authorized prior to November 16, 1964 that did not meet the separation distance required by section 73.207 and have remained short-spaced since that time may be modified to relocated provided that the predicted distance to the 1 mV/m field strength contour is not extended toward the 1 mV/m field strength contour of any short-spaced station."

circumstances" the Audio Services Division in EZ held that it would be unfair not to process the challenger's application under the same standard. EZ Communications, Inc., 8 FCC Rcd. at 2451 (¶ 17). Since a grandfathered incumbent FM licensee may relocate from one short-spaced site to another, the Audio Services Division determined that the FM challenger should likewise be allowed to propose a similar short-spaced site.

6. That rationale does not apply in the TV case at hand. The TV rule is materially different. Section 73.610(a) states that "applications for new TV broadcast stations or for changes in the transmitter sites of existing stations will not be accepted for filing if they fail to comply with the [mileage separation] requirements" (underlining added).^{5/} This means that TV incumbents, unlike FM incumbents, that are presently short-spaced may not automatically relocate to another short-spaced site. If a TV incumbent, such as WHSG-TV, attempted to relocate the rule requires that it relocate to a fully spaced site. Since WHSG-TV would have to propose a fully spaced site if it attempted to do what Glendale is doing--increasing the short-spacing--it cannot be persuasively argued that Glendale is exempt from making the same kind of showing.

7. As noted in detail in TBN PFCL ¶¶ 99-102, Glendale is simply seeking preferential treatment in the processing of its waiver request. The "pro-incumbent bias" Glendale asserts would occur if it is held to the same standard WHSG-TV (or any incumbent) must meet under rule 73.610(a), is merely a make-weight argument. Neither EZ nor Royce support Glendale's contention that renewal challengers proposing to increase the

^{5/} The exception in the Note to section 73.610(a) allowing short-spaced TV stations operating since 1952 does not obtain here since WHSG-TV became operational in 1991.

short-spacing of an incumbent station operating from a short-spaced site is automatically entitled to the waiver. A waiver of the TV channel spacing rule can only be granted after an applicant establishes at the outset that there are no fully spaced sites available. K-W TV, Inc., 7 FCC Rcd. 3617, 3618, 70 Rad. Reg. 2d (P&F) 1655, 1657 (1992); North Texas Media Inc. v. FCC, 778 F.2d 28, 32 (DC Cir. 1985). Glendale has not met this threshold requirement, and thus is not entitled to a waiver of the short-spacing rule.^{6/}

B. Glendale's Short-Spacing May Not Be Dismissed Out of Hand as De Minimis Since it Increases the Total Short-Spacing.

8. In Your Honor's Memorandum Opinion and Order, FCC 93M-577 at ¶ 4 (released September 10, 1993), you stated that: "Glendale's proposal would result in an increase in short-spacing of .26 kilometer over the current short-spacing between WHSG and the channel 63 [Montgomery] reference point. Glendale claims this increase is de minimis, but provides no supporting authority for this contention. Glendale's reliance on Kenter Broadcasting Co., 62 Rad. Reg. 2d (P&F) 1573, 1577, n. 9 (1986), is misplaced. The Commission there stated that short-spacing of one mile or 1.6 kilometers was the outer limits

^{6/} The Mass Media Bureau incorrectly states that there was no burden imposed upon Trinity to seek a fully spaced site when it was authorized to operate from its current location (MMB PFCL ¶ 3). As noted in TBN's PFCL ¶ 12, when Trinity filed for and was granted its authorization to construct at its current site it met the full spacing requirements of Commission rule 73.610(b). When the Commission cancelled Troy State University's authorization for noncommercial channel 63, Montgomery, Alabama in 1990 the Montgomery reference point was converted to the coordinates of the Montgomery main post office pursuant to rule 73.611(b)(3). This conversion created the grandfathered short spacing operation of WHSG. Accordingly, Trinity never had its application processed under a waiver of the spacing rules. However, as noted above, if Trinity sought to increase its grandfathered short-spacing it would have to make a full waiver showing, including the non-availability of fully spaced sites. Here, because Glendale is proposing to increase the short-spacing it too must make the same showing--which it has made no attempt to do.

of the de minimis exception. Kenter is not applicable here and provides no basis for grant of its request since the total distance by which the proposed site is short-spaced far exceeds 1.6 kilometers." Glendale has reasserted that argument, but again provides no supporting authority for its contention (Glendale PFCL ¶¶ 136-137). While it does cite The Outlet Co., 11 F.C.C.2d 528, 12 Rad. Reg. 2d (P&F) 387 (1968), this citation is quite astonishing, and wholly inapposite, since the applicant there met the threshold requirement of establishing that there were no fully spaced sites available. 12 Rad. Reg. 2d (P&F) 389 (¶ 6).

9. Glendale's de minimis argument is not only misplaced and inapplicable, but runs afoul of Commission rule 73.610(a) which expressly prohibits even grandfathered short-spaced stations from increasing an existing short-spacing. Indeed, the Commission's rule enunciated a strong policy against allowing any aggravation of existing short-spacings. Glendale's site proposal violates this prohibition, and seeks to do what the Commission's rule specifically prevents WHSG or any other incumbent from doing.^{7/} Its waiver request is not de minimis and it should not be processed as such.

C. Glendale's Plea That Its Increase Of the Short-Spacing Be Permitted Based on Equivalent Protection is Legally Insufficient.

10. As held in K-W TV, Inc., *supra*, 70 Rad. Reg. 2d (P&F) at 1657, equivalent protection does not support waiver of the television channel spacing rules. Glendale's

^{7/} Glendale's reference to Caloosa Television Corp., 3 FCC Rcd. 3656, 64 Rad. Reg. 2d (P&F) 1640 (1988) is also misplaced (Glendale PFCL ¶ 136). The 1988 Caloosa case was clarified in Caloosa Television Corp. (Reconsideration), 4 FCC Rcd. 4762, 66 Rad. Reg. 2d (P&F) 1303 (1989), which confirmed that television short-spacing policy requires applicants to establish there are no fully spaced sites available before a waiver can be granted. 66 Rad. Reg. 2d (P&F) at 1305 (¶¶ 3 and 5).

arguments on this point are unavailing, and none of the cases it cites support its position. As noted above, The Outlet Co., *supra*, notes that applicants must make a showing that there are no fully spaced sites available before the secondary public interest considerations are evaluated. Further, the other cases noted by Glendale, Sarkes Tarzian, Inc., 6 FCC Rcd. 2465, 69 Rad. Reg. 2d (P&F) 157 (1991), Roy H. Park Broadcasting, Inc., 44 Rad. Reg. 2d (P&F) 1083 (Chief, B/cast Bur. 1979), and Television Broadcasters, Inc., 4 Rad. Reg. 2d (P&F) 119 (1965), all outlined considerable public interest benefits supporting the waiver request at issue. Glendale, on the other hand, has not provided any similar support, and the record is bereft of any supporting criteria similar to that noted in those cases.

11. For example, in Sarkes Tarzian, Inc., *supra*, as previously noted by Trinity (TBN PFCL ¶ 97), the Commission granted a waiver request allowing a licensee to relocate from a fully spaced site to one that was short-spaced only on a showing that additional service to underserved areas would be provided (a first CBS network service to over 40,000 people), and because mountainous terrain was blocking the service to a large area and population within the station's grade B contour. In Roy H. Park Broadcasting, Inc., *supra*, the station proposed to serve an additional 252,542 people, and provide a first grade B CBS network service to 114,000 people. Further, 179,479 people would have their present predicted service upgraded from a grade B to grade A service. Glendale has made no similar showing, and the record here provides no similar public interest benefits connected with Glendale's proposal. Finally, in Television Broadcasters, Inc., the applicant showed that a grade A signal would be provided over the major city of Lake Charles, Louisiana, that an established market imbalance between networks and competitors would be alleviated, that

more than 40,000 people would receive an additional grade B television service, and that more than 200,000 would receive a television signal of greater field intensity than previously. Glendale, however, has provided no similar supporting public interest benefits. If it were not for these noticeable benefits established in each of the above cases relied upon by Glendale, the equivalent protection factor would not alone have supported the requested waiver. The same is certainly true in Glendale's case.

D. Glendale Moved Closer to the WHSG-TV Tower Simply to Save FAA Processing Time.

12. Glendale asserts that there are "significant aeronautical benefits" associated with its site because it "has FAA approval" (Glendale PFCL ¶ 141). Once again, however, Glendale's argument is merely make-weight. The fact is that when Glendale learned the FAA was going to reject its initial proposal, it determined to move closer to the WHSG tower simply to save processing time (TBN PFCL ¶ 98). Both Mr. Allen and Mr. Mullaney testified that they were aware if Glendale specified a site to the FAA that was fully spaced a new aeronautical study would be required and that such a proposal would take several months to process (*Id.*). It was the delay Glendale anticipated in having the FAA process a new aeronautical study, not aeronautical safety considerations, which motivated Glendale.

13. It is also true that Glendale never proposed a fully spaced site to the FAA (TBN PFCL ¶ 98). Indeed, had it even investigated in the area it had identified where a fully spaced site could be located it would have come upon the WFOX(FM) tower. And, locating on an existing tower does not require independent FAA approval, and such collocation is certainly a greater benefit to aeronautical air safety than Glendale's current short-spaced proposal.

- E. Glendale's claim that there is a suitable area for fully spaced sites for a Montgomery applicant cannot be credited because it made no showing there were in fact available sites within the identified area.

14. In attacking Trinity's proffer that a fully spaced site is available because of the WFOX(FM) tower Glendale states that "Trinity's showing is fatally defective because it does not show availability of that site to Glendale" (Glendale PFCL ¶ 144). While Trinity disagrees that the WFOX(FM) tower is not available to Glendale (TBN PFCL ¶¶ 103-106), it must be emphasized that Glendale made absolutely no effort to show there were in fact available sites where a channel 63 Montgomery applicant could locate in compliance with rule 73.610. As held in Ogden Television, Inc., 7 FCC Rcd. 3116, 3118 (VSD 1992), when an applicant seeking a waiver identifies a suitable area for future applicants to specify fully spaced sites, no support can be given to that claim unless there is a showing that in fact there are sites available within that area. Glendale's failure to even address this area renders its reliance on a claim of available sites to support its waiver meaningless.

15. The cases cited by Glendale do not help its cause. In Central Virginia Educational Television Corp., 49 Rad. Reg. 2d (P&F) 435 (1981), the applicant seeking a waiver met the threshold requirement of "reasonably demonstrat[ing] the unavailability of fully spaced sites." Glendale has, admittedly, not met this threshold. In Delta Rio Broadcasting Co., 32 Rad. Reg. 2d (P&F) 204 (1974), the issue involved the waiver of the 20 mile spacing requirement between channels 44 and 48, something materially different from the co-channel separation at issue here. Indeed, the purpose of the required 20 mile separation is to avoid intermodulation interference on channels. Because the nearest operating station on frequencies subject to possible intermodulation interference was 230

miles away, the Commission awarded the waiver even though the applicant failed to show there were suitable fully spaced sites available. The same result, however, is not warranted here since this is a co-channel separation. For Glendale's showing that there is an area where fully spaced sites could be located to be credited, it needed to show there were in fact sites available in that area, which it has not done.^{8/} Hence, it can not be awarded a waiver.

F. Summary

16. Glendale's request for waiver of the television spacing rule (rule 73.610) can not be granted. Commission policy requires that an applicant for a short-spacing waiver must make a threshold showing that no fully spaced sites are available. Glendale has made no such showing. While Glendale identified at the outset the area where a fully spaced site should be located, it never explored the availability of sites within that fully spaced area. Had it conducted such a required search it would have learned that there is a fully spaced site available, the WFOX(FM) tower (TBN PFCL ¶¶ 103-105).^{9/}

^{8/} For the same reason Glendale seeks to dismiss the availability of the WFOX(FM) tower to it (Glendale PFCL ¶ 144), contending Trinity failed to show Shamrock would in fact lease space to Glendale, any assertion that the former site of the The Troy State University shows there is an available site within the area Glendale has identified for a fully spaced Montgomery facility must be rejected.

^{9/} Glendale dismisses the availability of the WFOX(FM) tower by stating it is not required to "enter into a final or binding agreement in order to demonstrate reasonable assurance," and that the tower owner was unfamiliar with Glendale's proposal (Glendale PFCL ¶ 144). Glendale's argument, however, turns the entire process on its head. Trinity has established that a fully spaced site exists which was designed to accommodate just such a proposal as Glendale's (TBN PFCL ¶¶ 103-106). It is Glendale's failure, not Trinity's, to investigate the site and engage the WFOX(FM) tower owner in discussions about the sites' availability that matter. Trinity has shown that the WFOX(FM) tower owner is and always has been willing to negotiate with Glendale in good faith about its proposed use of the tower. Glendale's failure in this regard, not anyone else's, is what leaves its waiver ungrantable.

17. There is no prejudice or disadvantage to Glendale as a challenger in a renewal proceeding in requiring that it meet the short-spacing requirements. Instead, Glendale seeks preferential treatment since the TV channel spacing rule does not permit incumbent short-spaced TV stations to relocate to another short-spaced site without meeting the threshold requirement of establishing there are no fully spaced sites available. Since WHSG-TV would have to specify a fully spaced site if it attempted to relocate, regardless of whether it was in a comparative proceeding, Glendale must be required to meet the same standard because it proposes to increase the existing short-spacing.

18. Glendale's proposal would severely restrict the ability of a Montgomery channel 63 applicant to locate a fully spaced site, a result highly disfavored by Commission policy. Finally, has not shown that in fact there are sites actually available to a channel 63, Montgomery applicant within the remaining area it identified. For these reasons, its waiver should be denied.

G. Glendale's alternative request that the reference point for the Montgomery allocation be changed to remove the need for its waiver has been denied by the Allocations Branch of the Mass Media Bureau.

19. Glendale's attempt to manufacture a new forum for resolution of the short-spacing issue designated against it by seeking a change in the Montgomery, Alabama channel 63 reference point is inappropriate. It is also moot since the Commission's Allocations Branch rejected its request on October 18, 1994. A copy of the Commission's letter issued by John A. Karousos, Acting Chief, Allocations Branch, Policy & Rules Division, Mass Media Bureau, is attached as a courtesy to the Presiding Judge.

III. WHSG-TV RENEWAL EXPECTANCY

A. Mass Media Bureau Findings and Conclusions

20. TBN has few comments to make on the findings and conclusions of the Mass Media Bureau, largely because it believes that the Mass Media Bureau properly evaluated the record evidence in urging that TBN be given credit for a renewal expectancy (MMB Conclusions ¶ 13). There are, however, a few omissions or oversights which warrant comment.

(1) The Children's Programming Provided by WHSG-TV is Particularly Noteworthy

21. In paragraph 19 of its Findings the Mass Media Bureau omits to mention in its findings fully half of the many children's programs regularly broadcast during the License Term, including: Meadowlark Lemon (TBN PFCL ¶ 57); Dallas Holm (TBN PFCL ¶ 56); Superbook (TBN PFCL ¶ 58); Flying House (TBN PFCL ¶ 52); Quigley's Village (TBN PFCL ¶ 53); The Filling Station (TBN PFCL ¶ 54); and, Why Wait? (TBN PFCL ¶ 59). Likewise, the Mass Media Bureau's Findings omit to mention the fact that each and every one of TBN's children's programs was age-specific--designed to meet the special educational and informational needs of different age groups of children (TBN PFCL ¶ 46).

22. Similarly, in paragraph 10 of its Conclusions the Mass Media Bureau finds that TBN should be given credit for its children's programming, without specifying a reason for the finding or properly assigning the amount of credit to which TBN is entitled. TBN argues (See TBN PFCL ¶¶ 127-129) that its children's programming is an outstanding aspect of its licensee record. TBN provided a large amount of children's programming, in excess of seven hours per week (See TBN PFCL ¶ 45), a large number and variety of children's

programming, Id., and broadcast almost all of these programs at times when children would likely be in the audience (Id.). Moreover, each and every children's program for which TBN sought credit clearly included major program segments designed to meet the educational and instructional needs of children, the *sine qua non* of a licensee's program service designed for children (TBN PFCL ¶¶ 47-59). The Gospel Bill Show, for example, included a segment called "At the Zoo," teaching children about animals in the Zoo, as well as skits and program segments that taught lessons about children's behavior, such as how to be a friend and the importance of obeying your parents (TBN PFCL ¶ 48). Real Videos included lessons on the physical and cultural geography and the language where the program was being taped, and exhortations by the program host encouraging children to be themselves, do their best (particularly in school), and resist peer pressure (TBN PFCL ¶ 55). Quigley's Village included lessons in language arts, stories, and listening skills, and taught children lessons on social behavior such as learning to share, to cooperate with one another, and to respect their parents (TBN PFCL ¶ 53). Superbook included segments which taught children about the proper way to interact with other children centering on such themes as "be kind to one another" (TBN PFCL ¶ 58). The Filling Station taught children lessons on appropriate behavior, such as obeying your parents (TBN PFCL ¶ 54). Flying House included lessons in cultural and physical geography, literature, and taught children the moral lessons behind Bible stories (TBN PFCL ¶ 52). Other children's programming broadcast by WHSG-TV was similarly rich in educational and informational content (TBN PFCL ¶¶ 45-49).

23. Finally, TBN's children's programming clearly responded to repeated Commission exhortations to provide programming that was designed to meet the needs of

children of different age groups. Children's Television Report and Policy Statement, 50 F.C.C.2d 1, 31 Rad. Reg. 2d (P&F) 1228, 1237 (1974). The record shows, for example, that no less than five programs were provided (Davey and Goliath, Superbook, Filling Station, Flying House, and Quigley's Village) that were designed to meet the needs of pre-school children and early school age children, an age group the Commission has found often is neglected. Children's Television Report and Policy Statement, *supra*, 31 Rad. Reg. 2d (P&F) at 1237. Two different programs were designed to meet the educational and informational needs of middle school children (TBN PFCL ¶ 46), and an additional six programs were specifically designed to meet the educational and informational needs of pre-teens and teenagers (*Id.*). In fact, the number, variety, number of hours, time of broadcast, educational and informational content, and age specificity of TBN's children's programming shows a particular sensitivity to this often neglected aspect of licensee responsibility which is, for example, far better than the record found credible in Fox Television, Inc., 8 FCC Rcd. 2361, 72 Rad. Reg. 2d (P&F) 297 (Rev. Bd. 1993) (subsequent history omitted). Moreover, the Congressional mandate imposed by the Children's Television Act of 1990, requires that the Commission carefully evaluate the licensee's record in this regard as an important aspect of a licensee's record of service to its service area. 47 U.S.C. § 303b.

(2) WHSG-TV's Ascertainment Process was Effective and On-Going, and no Showing has Been Offered That it did not Insure the Needs and Interests of Monroe were Addressed in the Station's Programming

24. In paragraph 9 of its Conclusions the Mass Media Bureau points out that TBN, during the short License Term, did not ascertain the needs of its community of license, a weakness which TBN concedes in its own findings (TBN PFCL ¶ 117). The Mass Media

Bureau, however, draws the proper conclusion from the record evidence in this case, which is that TBN made a diligent and systematic, if not unflawed, effort to ascertain the problems, needs and interests of its service area. Monroe is a part of a greater service area, and, as found by the Mass Media Bureau, absent an affirmative showing--and no such showing was made in this case--that Monroe's needs were materially different from that of other communities in the service area, or that there was a particular need peculiar to Monroe that WHSG-TV failed to respond to, WHSG-TV's record of providing programming responsive to the problems, needs and interests of the service area cannot be found to be unresponsive to Monroe's needs.

25. Similarly, the Mass Media Bureau properly noted that WHSG-TV did not produce any local programming which was broadcast during the License Term (MMB Conclusions ¶ 10).^{10/} The Mass Media Bureau's Conclusions also take note, however, of the elaborate mechanics concerning the preparation of the Station's Preliminary and Final Reports and the methods TBN used to ensure that network programming was responsive to the problems, needs and interests of the WHSG-TV service area. As the Mass Media Bureau concludes, the source of the programming broadcast on a station is less important than the fact that the programming is both issue responsive and broadcast to respond to a need ascertained within the service area (MMB Conclusions ¶ 11).

^{10/} As noted below, however, WHSG-TV did broadcast programming that was produced in the service area and which provided substantive comments and important information about community issues. These programs included; The Earl Paulk Show (TBN PFCL ¶ 72); In Touch (TBN PFCL ¶ 73); and Changing Your World (TBN PFCL ¶ 74).

(3) WHSG-TV's License Term Was Only a Year in Length, and That Was the Maiden Year of Operation

26. The Mass Media Bureau's findings and conclusions also ignore two significant record facts which must be taken into account in any fair evaluation of TBN's claim to a renewal expectancy. The first is that the License Term at issue was only a year in length, an amount of time that would be difficult for any licensee to establish a record. The Review Board noted, for example, that the licensee in Metroplex Communications, Inc. (WHYI-FM), 4 FCC Rcd. 8149, 67 Rad. Reg. 2d (P&F) 185, 190 (Rev. Bd. 1989), had a short license term within which to make a record, and that licensee had roughly half a license term within which to build a record. Here, WHSG had only twenty percent (20%) of a standard five (5) year term upon which to build its record, and even at that level it established an effective ascertainment and program service record warranting a renewal expectancy.

27. Likewise important, but ignored by the Mass Media Bureau, is the fact that WHSG-TV's license term commenced when WHSG-TV went on the air for the first time and covered the first year of Station operation. Any new enterprise, particularly one operating in a complex federally regulated business like broadcast television, is bound to fumble and make mistakes as its staff learn their jobs. Clearly the Station's ascertainment efforts became more sophisticated as the Station Manager learned his job and became more familiar with TBN procedures. The fact that WHSG-TV was a brand new licensee, with no history in the community when it signed on the air, clearly had an impact on the Station's failure to produce local programming because a suitable studio had not been located and built, and upon the Station's ability to provide evidence of its community involvement and relevant testimony from community witnesses.

B. Glendale Findings and Conclusions

28. Glendale's Proposed Findings and Conclusions generally distort the record and the relevant Commission precedent to support its general thematic arguments. Rather than comb Glendale's Findings and Conclusions for errors and omissions, TBN has organized its response in terms of the general themes argued by Glendale.

- (1) **Glendale urges that TBN is not entitled to a renewal expectancy because it did not ascertain the needs of its community of license. The record shows, however, that WHSG-TV did ascertain the problems, needs and interests of the service area and broadcast responsive programming**

29. This theme is one which Glendale repeats over and over (see Glendale PFCL ¶¶ 153, 154, 159). It is an argument, however, based on an erroneous view of the record and the law. The record shows that TBN did ascertain the problems, needs and interests of the service area over the License Term, using methods which evolved as the Station Manager got more familiar with his job. That ascertainment was done over the entire metropolitan Atlanta area, and included interviews with community leaders, and a review of community problems covered in newspapers. Clearly a systematic effort was made over the entire license term to determine the needs of WHSG-TV's service area. Furthermore, TBN had a rather elaborate mechanism to ensure that the problems that were ascertained during the License Term were responded to by TBN programming.

30. As pointed out by the Mass Media Bureau, TBN's ascertainment effort was "sufficient to apprise it of the needs, problems and interests of Monroe as well as those of the WHSG(TV) service area" (MMB Conclusions ¶ 9). Moreover, there is in this record no showing that the needs of Monroe or Walton county are materially different from those of

the service area as a whole, or that there was an issue peculiar to Monroe or Walton county which was neglected by TBN. Absent such a showing TBN's array of issue responsive programming clearly served the needs of Monroe as well as that of the entire service area.

- (2) **Glendale Asserts That WHSG-TV's failure to produce local programming prevents it from receiving a renewal expectancy. This is not only factually inaccurate, but it ignores that the Commission has repeatedly recognized that national and institutional programs acceptably meet local needs**

31. Glendale argues that TBN's failure to produce any local programming during the License Term precludes TBN from being credited with a renewal expectancy (Glendale PFCL ¶ 154). TBN concedes that its claim to a renewal expectancy would be strengthened if it had produced local issue-responsive programming during the License Term (TBN PFCL ¶ 111). As pointed out by the Mass Media Bureau, however, the most important issue is not the source of the programming, but whether the programming responds to a need in the service area (MMB Conclusions ¶ 11).

32. Clearly TBN carried this burden of proof--it broadcast any number of programs responsive to issues and problems ascertained in the service area during the License Term. It is axiomatic that the Commission permits licensee's to choose to respond to local needs with network or institutional programming. "The Commission has repeatedly recognized that national and institutional programming may acceptably meet local needs." Seattle Public Schools, 4 FCC Rcd. 625, 65 Rad. Reg. 2d (P&F) 1621, 1635 (Rev. Bd. 1989). This discretion is particularly broad at the beginning of a license term when the Commission explicitly recognizes that the licensee's program schedule may not be as robust as later in the Station's license term. Section 73.1735 allows, for example, three full years